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OFFICE OF PETITIONS

JONES DAY
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In re Patent of Artavanis-Tsakonas et al.	:	DECISION ON REQUEST
Patent No. 7,727,732	:	FOR RECONSIDERATION OF
Issue Date: June 1, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/781,059	:	AND NOTICE OF INTENT TO
Filing Date: February 17, 2004	:	ISSUE CERTIFICATE OF
Attorney Docket No. 7326-132	:	CORRECTION

This is a decision on the petition filed July 30, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment on the patent be corrected to indicate the term of the patent is extended or adjusted by one thousand three hundred twenty-seven (1327) days.

The petition is **dismissed**.

Although the petition is dismissed, the Office has determined the patent term adjustment determination set forth on the patent is incorrect and the Office will *sua sponte* issue a certificate of correction setting forth a patent term adjustment of one thousand thirty-eight days. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing an assignee or patentee an opportunity to be heard. **Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to file any paper objecting to the issuance of the certificate of correction.**

No portion of this decision should be construed as a waiver of the requirement, set forth in 35 U.S.C. § 154(b)(4), that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Delay Under 37 C.F.R. § 1.702(b) ("B Delay")

Patentees assert the period of B Delay is 1,200 days, which is the number of days beginning on February 18, 2007, the day after the date three years after the filing date, and ending on June 1, 2010, the date the patent issued.

Pursuant to 37 C.F.R. § 1.702(b)(4), the period of B Delay does not include “[a]ny time consumed by review by the Board of Patent Appeals and Interferences or a Federal court.” Specifically, as stated in 37 C.F.R. § 1.703(b)(4), the period of B Delay does not include,

The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

A Notice of Appeal was filed September 25, 2008. The Office subsequently issued a Notice of Allowance on July 10, 2009. The number of days beginning September 25, 2008, and ending July 10, 2009, is 289 days.

The period of B Delay is 911 days after the 289-day period of time consumed by appellate review is excluded from the 1,200-day period beginning on February 18, 2007, and ending on June 1, 2010.

Delay Under 37 C.F.R. § 1.702(a) (“A Delay”)

Patentees assert, and the Office agrees, the period of A Delay includes 558 days of delay under 37 C.F.R. § 1.702(a)(1) and 112 days of under 37 C.F.R. § 1.702(a)(4).

Patentees’ also assert the period of A Delay should include 165 days of delay under 37 C.F.R. § 1.702(a)(2). Specifically, Patentees’ assert the period of A Delay should include the 165-day period beginning January 26, 2008, the day after the date four months after Patentees filed a Notice of Appeal, and ending on July 10, 2009, the date the Office issued a Notice of Allowance.

Pursuant to 37 C.F.R. § 1.705(d), issues raised in a petition under 37 C.F.R. § 1.705(d) which could have been raised under 37 C.F.R. § 1.705(b) will be dismissed as untimely. Patentees’ argument that Office delay includes 165 days of delay under 37 C.F.R. § 1.702(a)(2) could have been raised under 37 C.F.R. § 1.705(b). Therefore, the argument is untimely and the merits of the argument will not be addressed.

Overlap Between A Delay and B Delay

Patentees assert 112 days of delay under 37 C.F.R. § 1.702(a)(4) and 165 days of delay under 37 C.F.R. § 1.702(a)(2) overlap with the period of B Delay. However, the period of A Delay does not include 165 days of delay under 37 C.F.R. § 1.702(a)(2). Therefore, the period of A Delay and B Delay overlap by 112 days.

Delay Under 37 C.F.R. § 1.704 (“Applicant Delay”)

The period of Applicant Delay is 431 days and is not in dispute.

Conclusion

The Office will issue a certificate of correction setting forth a patent term adjustment of 1,038 days, which is the sum of 670 (558 + 112) days of A Delay and 911 days of B Delay reduced by 112 days of overlap between the periods of A Delay and B Delay and reduced by 431 days of Applicant Delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **one thousand thirty-eight (1038) days**.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

**UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION**

PATENT NO. : 7,727,732 B2
APPLICATION NO. : 10/781,059
DATED : June 1, 2010
INVENTOR(S) : Spyridon Artavanis-Tsakonas et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1069 days.

Delete the phrase "by 1069 days" and insert -- by 1038 days--